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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Application Number: 10/701,869
Filing Date: November 05, 2003
Appellant(s): Todd M. GOIN et al.

William T. Ellis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 01, 2009 appealing from the Office action mailed July 23, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal:

- Diao et al., (2005/0086645) issued on April 21, 2005.
- Carlson et al., (2003/0135609) issued on July 17, 2003.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diao et al., United States Patent Application Publication Number 2005/0086645 (hereinafter Diao), in view of Carlson et al., United States Patent Application Publication Number 2003/0135609 (hereinafter Carlson).

2. With respect to claims 1, 9, 11, 13-18, and 20, Diao teaches a method of adjusting relative value of implemented computer configuration changes [see abstract], the method comprising:

- identifying computer configuration changes [= configuration change, paragraphs 0050-0051] in a computer system [= at least one computing system, paragraph 0006], the computer configuration changes being identified by using a configuration tracking application [= monitoring the performance goals] installed either locally on the computer system or on a network on which the computer system is communicatively connected [paragraphs 0020, 0034, 0041, 0049, 0059, and 0061-0062];
- obtaining performance metrics [= obtaining the one or more generically-expressed performance metric, paragraph 0008] for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] implemented in the computer system [fig.2A], the performance metrics being obtained [= obtain performance goal, step 221 of fig.2C] by a performance collector application installed on the computer system [= a performance report may be obtained, paragraph 0059 and figs.2&4]; and
- assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more

configurations of the one or more resources based on the performance metric evaluation step, paragraph 0012], weight effectiveness of the identified implementation changes [= POOR and/or GOOD at evaluate performance step 220 of fig.2A] that represents the performance improvement based on implementation of each of the computer configuration changes as compared [= control logic 124 compares the system and/or individual resource performance] to performance improvements from other configuration changes [= a change in configuration parameters to improve overall system performance, paragraph 0050];

- comparing the performance metrics obtained in the obtaining step against performance baselines stored beforehand [= control logic 124 compares the resource performance, paragraph 0050] ; and
- based on the comparing, querying a data warehouse for antecedent configuration changes [= evaluate performance, paragraphs 0012, 0050, and 0058-0059].

However, Diao does not explicitly show assigning a weight value that represents a relative value of performance.

In a configuration method, Carlson discloses assigning a weight value [= values for the service level parameters] that represents a relative value of performance [see abstract]

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by assigning a

weight value that represents a relative value of performance because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023].

3. With respect to claim 2, Diao does not explicitly show increasing priority values for computer configuration changes resulting in performance improvements, the priority values being used for priority of the computer configuration changes in future recommendation sets.

In a configuration method, Carlson discloses increasing [= increase priority for the service level] priority values [= priority level] for computer configuration changes resulting in performance improvements, the priority values being used for priority of the computer configuration changes in future recommendation sets [= to recommend changes to the configuration based on the service metrics and the load characteristics measured by the service monitor, paragraphs 0022 and 0126-0132] and receiving a user input with respect to which ones of a plurality of collectors [= administrator may obtain more information about the configuration polity parameter for the selected configuration policy, paragraph 0084-0089] are to be utilized to obtain the performance metrics for the computer system, the plurality of collectors providing an additional role of running tests [= beta testing

of the element configuration policy, paragraph 0096] on various components of the network [fig.18 and paragraphs 0130-0135].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by increasing priority values for computer configuration changes resulting in performance improvements in future recommendation sets because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023].

4. With respect to claim 3, Diao does not explicitly show classifying computer configuration changes not resulting in performance improvements as secondary recommendations in future recommendation sets.

In a configuration method, Carlson discloses classifying computer configuration changes [= specifying service level attributes such as service level metrics, paragraph 0096] not resulting in performance improvements as secondary recommendations in future recommendation sets [paragraphs 0094-0099].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by

classifying computer configuration changes because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023].

5. With respect to claim 4, Diao further teaches removing computer configuration changes not resulting in performance improvements from future recommendation sets [= modifying and/or updating to change configuration, paragraphs 0052-0053].

6. With respect to claim 5, Diao further teaches summarizing recommended actions identified for a computer user, configuration changes implemented, and the resulting change in performance [= a list of configuration parameters, paragraphs 0051-0053 and fig.2D].

7. With respect to claim 6, Diao further teaches providing a report with performance trends on a plurality of computer systems where recommended configuration changes are not implemented [= a list of configuration parameters, paragraphs 0051-0053 and fig.2D].

8. With respect to claim 7, Diao further teaches analyzing computer metrics on the computer system and proposing configuration changes based on the analysis of computer metrics [= evaluate one or more performance metric associated with the one or more resources given one or more configurations of the one or more resources, paragraph 0012], comparing the performance metrics obtained in the obtaining step against performance baselines stored beforehand [= control logic 124 compares the resource performance, paragraph 0050] ; and based on the comparing, querying a data warehouse for antecedent configuration changes [= evaluate performance, paragraphs 0012, 0050, and 0058-0059].

9. With respect to claim 8, Diao further teaches wherein obtaining performance metrics for the computer system before [= obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration, paragraph 0008] and after computer configuration changes [= getting and/or updating performance report, step 210 of fig.2A, after the generically change configuration, step 250 of fig.2A] comprises accessing stored computer metrics [= list of performance metrics, paragraph 0049] in a database [= database name, paragraph 0038].

10. With respect to claim 10, Diao further teaches programmed instructions configured to analyze the computer system and propose configuration changes

based on the analysis [= evaluate one or more performance metric associated with the one or more resources given one or more configurations of the one or more resources, paragraph 0012].

11. With respect to claims 12 and 19, Diao further teaches programmed instructions configured to provide reports on implemented configuration changes [= a list of performance metrics, paragraph 0049].

(10) Response to Argument

In the remarks, applicant argued in substance that

I. The rejection of claims 1 and 5

In response to Appellant's argument that the combination of Diao in view of Carlson does not meet the condition to establish a prima facie case of obviousness, the examiner respectfully disagrees. The Appellant obviously attacks references individually without taking into consideration based on the teaching of combinations of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Se In re Keller, 642F. 2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner recognizes that obviousness can only be established by combining or modifying the teaching of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USP Q2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by assigning a weight value that represents a relative value of performance because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023]. Therefore, the combination of the references would motivate one of ordinary skill to employ teaching of Diao in view of Carlson to solve the problem as show in the above.

II. Independent claims 1, 9 and 17

In response to Appellant's argument that "the assignment of weight values that represent a relative value of perform improvement based on implementation of computer configuration changes," the examiner respectfully disagrees. First, the Appellant obviously attacks references individually without taking into consideration based on the teaching of combinations of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Se In re Keller, 642F. 2d 413, 208

USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Second, the Applicant's argument does not commensurate with the scope of the claim. Claims directly or indirectly recite assigning of weight values that represent a relative value of perform improvement. However, claims do not recite the limitation of "the assignment of weight values that represent a relative value of perform improvement based on implementation of computer configuration changes" (emphasis added). Further, Carlson discloses assigning a weight value [= values for the service level parameters, see abstract]. For example, assigning a weight value is nothing more than the service parameter setting in the GUI panel 800 of fig. 13, see paragraph 0105. Therefore, the combination of the references disclose claimed feature as show in the above.

In response to Appellant's argument that thresholds represent a relative value of performance improvement, the examiner respectfully disagrees. The Appellant obviously attacks references individually without taking into consideration based on the teaching of combinations of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Se In re Keller, 642F. 2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For instance, Diao et al. teaches assessing effectiveness of the computer configuration changes based on the obtained performance metrics [= cause a change in the one or more configurations of the one or more resources

based on the performance metric evaluation step, paragraph 0012], weight effectiveness of the identified implementation changes [= POOR and/or GOOD at evaluate performance step 220 of fig.2A] that represents the performance improvement based on implementation of each of the computer configuration changes as compared [= control logic 124 compares the system and/or individual resource performance] to performance improvements from other configuration changes [= a change in configuration parameters to improve overall system performance, paragraph 0050]. However, Diao does not explicitly show assigning a weight value. In a related, Carlson discloses assigning a weight value [= values for the service level parameters, see abstract]. For example, assigning a weight value is nothing more than the service parameter setting in the GUI panel 800 of fig. 13, see paragraph 0105. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Diao in view of Carlson by assigning a weight value that represents a relative value of performance because this feature are measured and monitored indicating a state of the resources in the system [Carlson, paragraph 0018]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to bring the system operation back to within the predetermined performance thresholds [Carlson, paragraph 0023]. Therefore, the combination of Diao and Carlson disclose claimed feature as show in the above.

III. Dependent claim 2, 10 and 18

In response to Appellant's argument that Carlson does not teach receiving a user input with respect to which ones of a plurality of collectors are to be utilized to obtain the performance metrics for the computer system, the plurality of collectors providing an additional role of running tests on various components of the network, the examiner respectfully disagrees. Carlson discloses receiving a user input with respect to which ones of a plurality of collectors are to be utilized to obtain the performance metric for the computer system, the plurality of collectors [= administrator may obtain more information about the configuration policy parameters for the selected configuration policy, paragraphs 0084-0089] providing an additional role of running tests [= beta testing of the element configuration policy, paragraph 0096] on various components of the network [fig.18 and paragraphs 0130-0135]. Therefore, Carlson discloses claimed feature as show in the above.

IV. Dependent claims 7 and 16

In response to Appellant's argument that Carlson does not teach comparing the performance metrics obtained in the obtaining step against performance baselines stored beforehand; and based on the comparing, querying a data warehouse for antecedent configuration changes, the examiner respectfully disagree. Diao discloses comparing the performance metrics obtained in the obtaining step against performance baselines stores beforehand;

and based on the comparing, querying a data warehouse for antecedent configuration changes [= evaluate performance, paragraphs 0012, 0050, and 0058-0059]. Therefore, Carlson discloses claimed feature as show in the above.

(11) Evidence Appendix

None

(12) Related Proceedings Appendix

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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